

REMARKS

This is a full and timely response to the outstanding non-final Office Action August 17, 2005. The Examiner has required the Applicant to elect to prosecute one of 6 groups of species (Species A - F) identified in the Office Action. In response to the restriction requirement, Applicant respectfully elects to prosecute the claims of Species F (claims 1-40), with traverse, as set out hereafter.

First, in the interests of equity and fairness, Applicant should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims, to fully protect the disclosed invention. Moreover, Applicant should be entitled to pursue different variants of the same types of claims (i.e., multiple species of fluid ejection systems). Because it will require Applicant to file and bear the additional cost associated with filing multiple applications to pursue each of Applicant's original claims, the restriction requirement is unfair. This is especially true given that as many more such applications will need to be filed to pursue each original claim if the current restriction/election requirement is maintained.

Second, as is provided in 35 U.S.C. § 121, restriction to one of six or more claimed inventions is proper only if the inventions are "independent and distinct." For example, in the present case, Species E and F, although not obvious in view of each other, are similar in subject matter. More specifically, each pertains to fluid ejection systems. For this reason, Applicant respectfully submits that the inventions described in the claims are not "independent" as defined in MPEP § 121 and that restriction between groups identified as Species A - F is improper.

Third, MPEP § 803 explicitly states that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine each on the merits even if the claims are directed to distinct or independent inventions. In this case, it

appears that a search for the identified species would be conducted within the same search class or classes. Accordingly, it would not be overly burdensome on the Examiner to search for each of Applicant's claims at the same time.

For at least the foregoing reasons, Applicant respectfully traverses the restriction requirement and respectfully requests the Examiner to examine the claims of Groups I-VI (Species A-F) together. Applicant expressly reserves the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney at (770) 933-9500.

Respectfully submitted,


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